

REMARKS

Reconsideration of this application as amended is respectfully requested. Claims 58, 65, 67-70, 72, 74-76, 78-80, 83, 98, 101-102, and 107 have been amended; claims 63, 81-82, 85-86, 97, 100, and 104-106 have been canceled; claims 1-57, 59-62, 64, 84, and 87-96 were previously canceled; and claims 108-112 have been newly inserted. Accordingly, claims 58, 65-80, 83, 98-99, 101-103, and 107-112 are in this application and are presented for the Examiner's consideration in view of the following comments.

In the Official Action, claims 86, 97, and 105 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,410,645 to Schwartzman ("*Schwartzman*") in view of published PCT Application No. WO 02/18222 to Lucht ("*Lucht*"). Applicant submits that the cancellation of claims 86, 97, and 105 as noted above now renders this rejection moot.

Claims 58, 63, 77-83, 85, 98-103, 106, and 107 have been rejected under 35 U.S.C. § 103(a) as being obvious U.S. Patent No. 3,121,906 to Hulsh ("*Hulsh*") in view of U.S. Patent No. 6,523,720 to Robbins ("*Robbins*"). Applicant submits that the cancellation of claims 63, 81, 82, 85, 100, and 106 as noted above now renders the rejection of these claims moot. Applicant respectfully traverses this rejection as it pertains to the remaining claims in view of the foregoing amendments and for the reasons set forth below.

Initially, applicant notes that the containers and applicators of *Hulsh* and *Robbins* are for substantially different purposes and, hence, have substantially different structures such that their teachings simply cannot be combined. More particularly, *Hulsh* is directed to a squeezable tube dispenser for dispensing thick, pasty materials which are dispensed by deforming the container (*Hulsh* col.1 ll.15-19), and which dispense the contents directly onto an applicator sponge for use

(*Hulsh* col.1 1.70 through col.2 1.7). *Robbins*, on the other hand, is directed to a container for dispensing consumable liquids. Thus, the container of *Robbins* does not dispense its contents by squeezing, but rather by tilting the bottle and pouring the contents out. (*Robbins* col.3 11.13-14.) Furthermore, *Robbins* does not dispense its contents through a sponge "applicator", but rather dispenses the contents through a pour spout. (*Robbins* Abstract.) As the types of materials these devices are intended to dispense are so vastly different from one another, and as the structures of these devices are therefore manifestly different, applicant submits that one of ordinary skill in the art would lack the motivation to combine their respective teachings.

Rather than finding the motivation to combine the references in the prior art, the Examiner's rejection is a classic example of hindsight reconstruction in which the Examiner has selected teachings from multiple prior art references to create the subject matter claimed by applicant using the applicant's specification as a "template." *Tex. Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 988 F.2d 1165, 26 U.S.P.Q.2d 1018 (Fed. Cir. 1993). The impropriety of such hindsight reconstruction is well settled. *Interconnect Planning Corp. v. Feil*, 744 F.2d 1132, 227 U.S.P.Q. 523 (Fed. Cir. 1985); *In re Fine*, 837 F.2d 1071, 15 U.S.P.Q.2d 1596 (Fed. Cir. 1998). Although the recent Supreme Court decision in *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007), rejected a "rigid application" of the "teaching, suggestion or motivation" test for combining reference teachings, the decision reaffirms the principle that there still must be an apparent reason to combine elements taught by plural references. No such reason is apparent here.

Moreover, even if the teachings of *Hulsh* and *Robbins* could somehow be combined, they would result in a dispensing

receptacle of some type, but certainly not that of the present invention.

In this regard, applicant notes the requirement in claim 58 for

"at least one first accessory including a first applicator having teeth and an assembly skirt"

as well as the requirement for

"an annular bead integrally formed on an inside surface of said assembly skirt, said annular bead including a sealing surface that abuts said shoulder when said first accessory is fixed to said neck,

wherein said skirt fixing means is situated between and spaced from both said free end and said annular bead."

Applicant submits that neither *Hulsh* nor *Robbins*, either alone or in combination, teaches or suggests these limitations.

Hulsh discloses a container 10 having a closure cap 20 and an applicator 30. (*Hulsh* col.2 ll.36-40.) The container includes a neck having a first portion 12 with external threads 13, a second portion 15 with external threads 16 and a shoulder 14 connecting the first and second portions of the neck. (*Hulsh* col.2 ll.44-49.) The applicator 30 has a pair of concentric cylindrical skirts 31 and 34 spaced apart by an annular top wall 36. Internal threads 35 on skirt 34 cooperate with the threads 13 on the neck of the container to removably secure the applicator to the container. (*Hulsh* col.2 ll.64-72.) The closure cap 20 cooperates with threads 16 on the neck of the container to prevent the contents of the container from being expelled. (*Hulsh* col.2 ll.54-60.) With applicator 30 connected to the neck of the container, however, the shoulder 14 formed on the neck of the container is contacted by a flat surface on the applicator 30, which is a continuation of the annular top

wall 36. Thus, *Hulsh* fails to teach an annular bead formed on an inside surface of the assembly skirt and having a sealing surface that abuts the shoulder when the applicator is fixed to the neck of the container, all as required by claim 58.

Furthermore, applicant notes that the applicator 30 of *Hulsh* includes a sponge having a bore 37 for dispensing the contents of the container. Hence, *Hulsh* fails to teach an applicator having teeth as required by claim 58.

Robbins fails to overcome the deficiencies of *Hulsh* noted above. Thus, *Robbins* discloses a container for dispensing consumable liquids in which a removable spout 22 includes a sealing surface or gasket 63 which abuts a shoulder of the container. Gasket 63 is a separate element which may be adhered to the container, and which presses against the inner surface of spouts 22 to form a seal when the spout is threaded onto the container. (*Robbins* col.4 l.62 through col.5 l.3.) It is therefore clear that *Robbins* does not teach an annular bead integrally formed on an inside surface of the assembly skirt of the removable spout, as required by claim 58. In fact, *Robbins* plainly describes spout 22 as "a standard threaded pour spout." (*Robbins* Abstract.) Moreover, it is plainly evident that *Robbins* teaches a first applicator in the form of a pour spout, not one having teeth.

In view of the foregoing, applicant submits that claim 58 distinguishes patentably over *Hulsh* and *Robbins*, and any combination that the Examiner contends can be made therefrom, such as to warrant its immediate allowance, which action is respectfully requested.

Claims 77-80, 83, 98-99, 101-103, and 107 depend either directly or indirectly from claim 58. For at least this reason, applicant submits that these dependent claims patentably distinguish over both *Hulsh* and *Robbins* and are in condition for allowance.

Claims 65-72, 74-76, and 104 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Hulsh* in view of *Robbins*, and further in view of U.S. Patent No. 6,457,476 to Elmer ("*Elmer*"). Applicant notes that claim 104 has been canceled, rendering the rejection of this claim moot. This rejection is respectfully traversed with respect to the remaining claims in view of the above amendments and arguments, and for the reasons set forth below.

Applicant would initially reiterate the contentions set forth above with regard to the plain deficiencies of both *Hulsh* and *Robbins*, and in their attended combination. *Elmer* manifestly fails to overcome all of these deficiencies. Although *Elmer* teaches an applicator having a plurality of teeth with orifices for dispensing a substance, the reference is silent as the applicator having an annular bead integrally formed on an inside surface of the assembly skirt, the annular bead including a sealing surface that abuts a shoulder on the neck when the accessory is fixed to the neck, all of which are required by the rejected claims by virtue of their dependancy from claim 58. For at least this reason, applicant submits that claims 65-72 and 74-76 would not be obvious from the combined teachings of *Hulsh*, *Robbins*, and *Elmer*, including any combination which the Examiner contends can be made therefrom. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 73 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hulsh* in view of *Robbins* and *Elmer*, and further in view of U.S. Patent No. 2,270,529 to Kirschenbaum ("*Kirschenbaum*"). Applicant respectfully traverses this rejection in view of the above amendments and arguments, and for the reasons more fully set forth below.

Applicant would again reiterate the contentions set forth above with regard to the plain deficiencies of *Hulsh*, *Schwartzman* and *Elmer*, and in particular, in their attempted combination. *Kirschenbaum* has been cited as teaching a comb applicator having at least one tooth with a groove extending

therein, and thus clearly fails to overcome the deficiencies of *Hulsh*, *Robbins* and *Elmer* noted above. Accordingly, applicant submits that claim 73 patentably distinguishes over *Hulsh* in view of *Robbins*, *Elmer* and *Kirschenbaum* such as to warrant its immediate allowance. In view of the foregoing, withdrawal of this rejection is respectfully requested.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,
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